

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 31 October 2022

**Public Authority:** Kent County Council  
**Address:** Sessions House  
County Hall  
Maidstone  
Kent  
ME14 1XQ

### **Decision (including any steps ordered)**

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1. The complainant requested information from Kent County Council ("the Council") about domiciliary care. The Council withheld some of the information under section 31(1)(g) (prejudice to law enforcement) of FOIA and the commercial interests exemption under section 43(2) of FOIA.
2. The Commissioner's decision is that the law enforcement exemption under section 31(1)(g) is not engaged in relation to any of the withheld information. Regarding the exemption under section 43(2), the Commissioner's decision is that this exemption has been correctly applied only to the name of the care provider(s) investigated by the Council, the Council has failed to demonstrate that this exemption is engaged in relation to the rest of the withheld information.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
  - Disclose the withheld information, other than the name of the care provider(s) investigated by the Council. The information to be disclosed consists of the number of care provider(s) investigated and the financial amounts lost and/or recovered

per domiciliary care provider (which is held as an annual estimate of loss per contract).

4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. On 23 May 2021, the complainant wrote to the Council and requested information in the following terms:
  - “1a. Please could you provide a list of the domiciliary care providers [excel spreadsheet] that Kent County Council commissioned in the financial years 2019/20 and 2020/21.
  - 1b. For each of the providers listed in Q[1a], could you state the total contract amount paid to them in each financial year?
  - 2a. For the financial years 2019/20 and 2020/21, please could you state the number of deaths amongst home care (domiciliary care) service users notified to the council by each of your commissioned domiciliary care providers?
  - 2b. Please could the information above also be broken down into the following age categories: Under 18, 18-64, and 65+.
  - 3a How many of the domiciliary care providers in 1a, have been investigated by the KCC counter fraud team for "time clipping" - include names of companies
  - 3b Please provide the financial amounts lost and/or recovered per domiciliary care provider”.
6. The Council provided some information within the scope of the request but refused to provide the remainder. It cited the personal information exemption under section 40(2) of FOIA and the commercial interests exemption under section 43(2) of FOIA as its bases for doing so.
7. The complainant requested an internal review, specifying that they wanted the Council to review its response to parts 3a and 3b of the request only. The Council had withheld this information under the commercial interests exemption under section 43(2) of FOIA.

8. Following an internal review the Council revised its position to withhold the information requested in parts 3a and 3b of the request under both the law enforcement exemption under section 31(1)(g) of FOIA and the commercial interests exemption under section 43(2) of FOIA.

## **Scope of the case**

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9. The following analysis considers whether the Council is entitled to rely on the law enforcement exemption under section 31(1)(g) of FOIA and/or the commercial interests exemption under section 43(2) of FOIA as bases for refusing to provide the information requested in parts 3a and 3b of the request.
10. During the course of the Commissioner's investigation the Council provided a large amount of information that it had ostensibly withheld in response to parts 3a and 3b of the request. The Commissioner's view is that the majority of this information is not in scope of parts 3a and 3b of the request. The information outside the scope of the request is not considered further in the Commissioner's analysis.

## **Reasons for decision**

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### **Section 31(1)(g) - law enforcement**

11. Of the information within the scope of the request, the information withheld under this exemption comprises the number of domiciliary care provider(s) investigated and the financial amounts lost and/or recovered per domiciliary care provider (which is held as an annual estimate of loss per contract).
12. The Council argues that to disclose this information would be likely to prejudice its functions for the purpose of ascertaining whether any person is responsible for any conduct which is improper, specifically its audit function. It is the Commissioner's understanding that the Council wishes to argue that disclosure of the information it has withheld under section 31(1)(g) would be likely to discourage organisations from co-operating fully with any future audits due to potential reputational damage. The Commissioner does not accept that disclosure of the number of care provider(s) investigated and annual estimate of loss per contract would have this effect as the Council has not provided any arguments to support the fact that to

disclose these two pieces of information would allow any care provider(s) to be identified.

13. The Commissioner's decision is that the law enforcement exemption under section 31(1)(g) is not engaged in relation to any of the withheld information. He has gone on to consider the commercial interests exemption under section 43(2) of FOIA.

### **Section 43(2) – prejudice to commercial interests**

14. Of the information within the scope of the request, the information withheld under section 43(2) constitutes the number and name(s) of domiciliary care provider(s) investigated by the Council's counter fraud team for "time clipping" and the financial amounts lost and/or recovered per domiciliary care provider (which is held as an annual estimate of loss per contract).
15. The Council argues that disclosure of the withheld information would be likely to prejudice the commercial interests of the care provider(s) investigated by the Council as it would damage their reputation. The care provider(s) are commercial entities. The Council provided submissions from the relevant provider(s) who argued that disclosure would directly impact their reputation such that there would be a real and significant prejudice in seeking further work and would create prejudice in the conduct of new tenders.
16. Regarding the number of care provider(s) investigated and annual estimate of loss per contract, the Commissioner does not accept that a causal link exists between disclosure of this information and any prejudice to any care provider's commercial interests. This is because, as noted in the Commissioner's analysis of the section 31(1)(g) exemption, the Council has not provided any arguments to support the fact that to disclose these two pieces of information would allow any care provider(s) to be identified.
17. The Commissioner is satisfied that a causal relationship exists between the disclosure of the names of the care provider(s) investigated by the Council and the prejudice to commercial interests that the council described and that prejudice would be likely to occur if the names of the providers were disclosed. Knowledge that a care provider had been the subject of an investigation would give rise to assumptions that would be likely discourage other individuals and/or organisations from using their services.
18. As the Commissioner has decided that section 43(2) is engaged by some of the withheld information, specifically the names of the care

provider(s) investigated by the Council, he has gone on to consider the public interest test.

19. The Commissioner recognises the general public interest in transparency and that in disclosure of information relating to a loss of public money, however, having reviewed the withheld information and considered the Council's arguments his view is there is no particularly weighty public interest in the disclosure of the names of the care provider(s) investigated by the Council.
20. In respect to the public interest in maintaining the exemption, the Commissioner has already acknowledged that the envisaged prejudice would be likely to occur. He considers that the Council's arguments are strong in identifying likely issues which would arise from a disclosure of the names of the care provider(s) investigated by the Council. The reputational damage that would be likely to be caused to the care providers may prejudice the Council's ability to appoint the best possible care provider(s) in the future as some potential providers may be dissuaded from bidding for contracts if they fear potential reputational damage should they be audited. Prejudicing the Council's ability to appoint the best possible care provider(s) in the future would not be in the public interest.
21. Given the limited public interest in the disclosure of the names of the providers, the Commissioner's decision is that the public interest in the exemption being maintained outweighs that in the information being disclosed on this occasion. The Council was not, therefore, obliged to disclose the names of the domiciliary care provider(s) investigated.

## Right of appeal

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22. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Victoria James**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**